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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 CLARKE and REBECCA WIXON and
NORMAN and BARBARA WIXON,
derivatively and on behalf of themselves
and all others similarly situated,

17 Plaintiffs,

18 v.

20 WYNDHAM RESORT DEVELOPMENT
CORP. (f/k/a Trendwest Resorts, Inc.),
21 GENE HENSLEY, DAVID HERRICK,
JOHN HENLEY, PEGGY FRY, JOHN
McCONNELL, and nominally,
22 WORLDMARK, THE CLUB,

23 Defendants.

Case No.: C 07-02361 JSW

**[PROPOSED]
STIPULATED ORDER
SUPPLEMENTING PROTECTIVE
ORDER REGARDING PRIVILEGED
DOCUMENTS IN DISCOVERY**

25 ¹ Admitted *pro hac vice*.

1 On October 15, 2007, the parties stipulated, and the Court entered, a Stipulated
 2 Protective Order [Doc. No. 37] to govern the production of documents deemed
 3 confidential within the course and scope of discovery in this action. On November 26,
 4 2007, Gene Hensley, David Herrick, Peggy Fry, John Henley, and John McConnell
 5 (collectively "Director Defendants") were added as parties to the Stipulated Protective
 6 Order. [Doc. No. 62]

8 As part of a separate discovery agreement, Defendant Wyndham Resort
 9 Development Corp. ("WRDC") is in the process of preparing a production of
 10 Electronically Stored Information ("ESI") specific to certain document custodians and
 11 search terms identified by Plaintiffs Clarke and Rebecca Wixon, and Norman and
 12 Barbara Wixon, (collectively "Plaintiffs"). Because of the volume and the timing
 13 associated with this production, Plaintiffs have agreed to treat all ESI produced by
 14 WRDC as part of this production as confidential under the Stipulated Protective Order,
 15 and WRDC has agreed to produce responsive ESI without a prior review of the ESI,
 16 subject only to an electronic privilege screen of the ESI by WRDC's electronic discovery
 17 vendor. Without prior review of the ESI being produced using the process to which the
 18 parties have agreed, there exists the likelihood that privileged material may be
 19 inadvertently produced. Because WRDC also maintains data on behalf of WorldMark,
 20 The Club ("WorldMark") pursuant to its Management Agreement, the Director
 21 Defendants share an interest in avoiding any inadvertent production of privileged
 22 material. The unique relationship of the parties and the complex nature of this litigation
 23 contribute to the potential for the inadvertent production of privileged or protected
 24 information.

Pursuant to Fed.R.Civ.P. 26(c), Fed.R.Evid. 502, and the stipulation of the parties for entry of this Order, IT IS HEREBY ORDERED that the inadvertent or unintentional production of information by WRDC, the Director Defendants, or other persons as part of this production containing, or otherwise disclosing, information that is subject to any claim of privilege or protection, including, but not limited to, the attorney-client privilege and the protection afforded by the attorney work-product doctrine, shall not be deemed a waiver in whole or in part of the claim of privilege or immunity from production, either as to the specific information disclosed or as to any other information relating thereto on the same or related subject matter. In particular, the production of privileged or otherwise protected information by WRDC or the Director Defendants shall not be deemed a waiver or an impairment of any claim of privilege or protection of WRDC or the Director Defendants, including, but not limited to, the attorney-client privilege and the protection afforded by the attorney work-product doctrine.

To the extent that WRDC or the Director Defendants inadvertently disclose information that is privileged or otherwise immune from discovery under the attorney-client privilege, work product doctrine or any other privilege, that party, upon discovery of such inadvertent disclosure, shall promptly advise the Plaintiffs and request that the information be returned or destroyed. Within seven (7) days of receipt of notice of a privileged disclosure, Plaintiffs shall return or destroy such inadvertently produced information, including all copies, electronic and otherwise, and Plaintiffs shall confirm their compliance with this Order in writing upon request.

This Order shall not prejudice the right of any party to challenge any other party's claim that information is privileged on any grounds other than the inadvertent or

1 unintentional production of such information. Plaintiffs, upon returning or destroying
2 inadvertently produced ESI pursuant to this Order, do not waive their right to challenge
3 the status of the information at issue as being privileged and/or work product. In the
4 event of a dispute regarding whether any particular ESI produced pursuant to this Order
5 is privileged and/or work product, this stipulation and Order does not alter the burden of
6 the producing party to demonstrate that the disputed information is properly the subject
7 of the privilege claimed under applicable law.

8
9 Nothing in this Order shall abrogate the protections against waiver of attorney-
10 client privilege or work product immunity set forth in Fed. R. Evid. 502, or the provisions
11 governing inadvertent failures to designate information or items as "Confidential" or
12 "Highly Confidential – Attorneys' Eyes Only" contained in paragraph 5.3 of the
13 Stipulated Protective Order [Doc. No. 37] entered October 15, 2007.
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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3

4 Dated: January 26, 2009

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: January 28, 2009



Hon. Jeffrey S. White
United States District Judge